IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

C.O.C.P. No. 812 of 2005.
Date of Decision: August 22, 2006.

Jagdish Chanana & Anr.

....**Petitioners**

through
Mr. Hemant Bassi, Advocate

Versus

Ram Kumar Dabas & Anr.

...**Respondents**
through
Mr. R.D.Sharma, DAG, Haryana
Mr. Bijender Dhankar, Advocate,
for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

Petitioner No.2, in her capacity as proprietor of one Santosh Plastics, had some business transactions with respondent No.2. It appears that respondent No.2 gave some cheques in favour of petitioner No.2 and/or her firm and the same having been dishonoured, five complaints under Section 138 of the Negotiable Instruments Act, were filed against respondent No.2 at the instance of petitioner No.2 in the Courts at Delhi. These complains were filed in the months of July/August, 2004 and it appears that in one of such complaints, summoning order was passed on 4.10.2004 which was served upon respondent No.2 on 17.12.2004.

According to the petitioners, respondent No.2, as a counter blast to the aforementioned complaints, got registered FIR No.83 dated 12.3.2005, under Sections 419/420/465/468/471/474/34 IPC at Police Station City Sonepat against them.

Apprehending their arrest in the aforementioned FIR, petitioners No. 1 and 2, who are husband and wife, filed a petition under Section 438 Cr.P.C. (Criminal Misc. No.19268-M of 2005) in which the following ad-interim order was passed by this Court on 4.4.2005:-

> "Meanwhile, arrest of the petitioners is stayed subject to the condition that they shall appear before the Investigating Officer on 12.4.2005 at 10 AM and also on any other date(s) as directed by the Investigating Officer and they shall fully cooperate in the investigation. In case they are required to be arrested, they shall be released on bail to the satisfaction of arresting officer. Further, they shall not leave India without the prior permission of the trial Court and they shall surrender their passports before the Investigating Officer".

The third petitioner, namely, son of petitioners No. 1 and 2 also filed Criminal Misc. No.19756-M of 2005 for the grant of pre-arrest bail in which the following ad-interim order was passed by this Court on 8.4.2005:-

> "Meanwhile, arrest of the petitioner is stayed subject to the condition that they shall appear before the Investigating Officer on 18.4.2005 at 10 AM and also on any other date(s) as directed by the Investigating Officer and he shall fully cooperate in the investigation. In case they are required to be arrested, he shall be released on bail to the satisfaction of arresting officer.

Further, he shall not leave India without the prior permission of the trial Court and he shall surrender his passport before the Investigating Officer".

The three petitioners filed yet another petition under Section 482 Cr.P.C. (Criminal Misc. No.20115-M of 2005) for quashing of the aforesaid FIR, in which while issuing notice of motion for 28.7.2005, this Court vide its order dated 7.4.2005 stayed further proceedings.

It is the case of the petitioners that in deference to the ad-interim orders passed in their favour in the pre-arrest bail petitions, reproduced above, they appeared before the Investigating Officer on 12th and 18th April, 2005 respectively and brought to his notice in writing vide communications (Annexures P-4 and P-5) that further proceedings in the FIR had already been stayed by this Court. A copy of the written communication which the petitioners had received from their counsel, was also appended with the aforementioned communications.

Notwithstanding the fact that the ad-interim stay on further proceedings in the FIR was brought to the notice of the first respondent, it is alleged that he, at the instance and in connivance with respondent No.2, kept on directing the petitioners to join investigation and directed them to appear on one after the other dates so as to pressurise them for a compromise. It is in this over anxiety that respondent No.1 even issued a notice under Section 160 Cr.P.C. on 22.7.2005 (Annexure P-7), the translated version of which reads as follows:-

"There is a stay of proceedings in the aforementioned case from the Hon'ble Punjab and Haryana High Court at Chandigarh. That you Shri Jagdish Chanana have not given any

proof regarding receipt and non-receipt of money from Gupta Plastic and Siri Trading which you assured ASI on 14.4.2005 to give him its proof and therefore the same should be furnished. And you Rakesh Chanana come present today in the Court of CJM, Sonepat to give your signatures which are essential failing which it would be deemed to be non-cooperation with the investigation".(Emphasis applied).

Alleging that the action of respondent No.1 to continue with the investigation being derogatory to the orders dated 7.4.2005 passed by this Court whereby further proceedings were stayed and, thus, the said respondent is guilty of committing contempt of this Court, this petition has been filed.

In response to the show cause notice, both the respondents have filed their respective affidavits.

There is hardly any dispute that despite there being stay, respondent No.1 continued with the investigation of the case.

However, in order to justify his action, respondent No.1 has come up with the plea that since ad-interim pre-arrest bail was granted to the petitioners subject to their joining the investigation, he was entitled to continue with the investigation. It is also averred that despite staying further proceedings on 7.4.2005, this Court on 8.4.2005 directed petitioner No.3 to appear before the Investigating Officer on 18.4.2005 and respondent No.1 bona-fidely believed that he could further proceed with the investigation.

Respondent No.2 in his affidavit has denied the allegations of alleged connivance and/or collusion with respondent No.1-the Investigating Officer.

What emerges from the pleadings on record is that in his pre-arrest bail petition which came up for hearing on 8.4.2005, petitioner No.3 could not have mentioned regarding stay on further proceedings by this Court for the reason that the said petition for pre-arrest bail was filed by him prior to the joint petition under Section 482 Cr.P.C. for quashing of the FIR.

Respondent No.1 has not denied the fact that the order staying further proceedings in the case was brought to his knowledge. He himself has mentioned this fact in the notice under Section 160 Cr.P.C. which he issued to the petitioners on 22.7.2005 (Annexure P-7). Despite acknowledging this fact, he directed them to give proof regarding "receipt and non-receipt of money from Gupta Plastic and Siri Trading". He also directed to one of them to be present in the court of the Chief Judicial Magistrate, Sonepat to give "signatures which are essential", failing which it would be deemed to be non-cooperation with the investigation.

From the tone and tenor of the notice under Section 160 Cr.P.C., reproduced above, it appears that respondent No.1 for the reasons best known to him, in order to circumvent the orders passed by this Court whereby further proceedings were stayed, wanted to conclude the investigation, before the next date of hearing fixed by this Court in the quashing petition, obviously to render the same infructuous. The abnormal and hasty manner, exhibiting his keen interest in the case, demonstrated by respondent No.1 creates a lurking suspicion on his bona-fides.

I am, thus, prima facie, satisfied that respondent No.1 deliberately and willfully acted in a manner to frustrate and bye-pass the interim orders passed by this Court whereby further proceedings in the FIR case were stayed.

From the contents of the affidavit dated 28.10.2005 which respondent No.1 has filed, it is difficult to infer repentance even remotely. The so-called apology is also fully loaded with a rider that "in case it is concluded that the deponent has knowingly and willfully flouted the orders" of this Court, (then only) he tenders unqualified and unconditional apology.

Faced with this situation, learned State Counsel representing respondent No.1 pleads mercy for the said respondent and craves to show magnanimity.

After hearing learned counsel for the parties and having regard to all the attending circumstances, including the fact that as of now, there is no judicial verdict that the petitioners were falsely roped in the aforesaid FIR at the instance and behest of respondent No.2 and also taking a lenient view in the matter, this petition is disposed of with a warning to respondent No.1 to be careful in future and with a further direction to him to pay the costs of Rs.10,000/- to the petitioners. The amount of costs shall be paid by respondent No.1 within one month from today and he shall not claim re-imbursement thereof from the State Exchequer/Govt. In other words, the costs shall be borne by respondent No.1 personally.

Disposed of.

Rule discharged.

August 22,2006. **(SURYA KANT)**
dinesh **JUDGE**